

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT A. DOAN, SR, and LINA DOAN,

Plaintiffs-Appellants/Cross-  
Appellees,

v

MICHAEL L. HILL and LARILINN R. HILL,

Defendants-Appellees/Cross-  
Appellants.

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UNPUBLISHED

October 21, 2004

No. 248518

Cheboygan Circuit Court

LC No. 01-006821-CH

Before: Murphy, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right an order quieting title to a piece of Cheboygan County property in favor of defendants. Defendants cross-appeal, asserting that there were additional bases for quieting title in their favor. We affirm.

In March 1979, defendants entered into a land contract to purchase 12.3 acres of property in Cheboygan County. Although defendants' deed mentioned a railway right of way running east to west through the property, it did not except this portion from the parcel that defendants purchased. In 1996, plaintiffs purchased approximately 6.8 miles of a sixty-six foot wide property from the United Railroad Company (formerly Michigan Central Railroad Company), a portion of which was the railroad right of way that crossed defendants' property.

After this purchase, plaintiffs filed a complaint alleging that they owned the railroad grade described above and requesting that the court quiet title to the property in their favor. The court found that plaintiffs' predecessors had failed to record any documents of interest in the property for over forty years and that the Marketable Title Act, MCL 565.101 *et seq.*, terminated any interest in the property before plaintiffs purchased the corridor in 1996.

We review de novo equitable actions, including actions to quiet title, but the trial court's factual findings are reviewed for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). The proper application of a statute is a question of law that this Court reviews de novo. *Fowler v Doan*, 261 Mich App 595, 298; 683 NW2d 682 (2004).

This Court's recent decision in *Fowler*, which involved one of the same parties (plaintiff Doan in the case at bar was the defendant in *Fowler*) and nearly identical facts, resolves this case also. The *Fowler* case involved another property overlapped by the railway property the Doans purchased in 1996. In *Fowler*, the plaintiffs purchased a 3.4 acre property by land contract in February 1996. *Id.* at 597. In July of that year, the defendants (the Doans) purchased the 6.8 mile railway corridor, a segment of which ran through the property owned by the plaintiffs (the Fowlers). *Id.* When the Fowlers discovered that the Doans were trying to sell the strip of land, they sued to quiet title. *Id.* The lower court found that both chains of title originated with conveyances made by Norman and Nora Beverly in 1905, when the Beverlys conveyed the strip of land at issue to the Jackson, Lansing & Saginaw Railroad Company who then conveyed the property to the Michigan Central Railroad Company in 1916. *Id.* There were no records of any conveyances from 1916 to July 1996 when the Doans purchased the railroad property. *Id.*

In 1911, the Beverlys conveyed a larger piece of property, which included the previously conveyed railroad property, to Jonathan Royce. *Id.* at 598. The deed to Royce did not except the railroad property. *Id.* The larger piece of property was subsequently conveyed several times until the Fowlers purchased it in 1996. The trial court determined that the Fowlers held property with an uninterrupted chain of title for fifty-seven years, whereas the Doans' title was dormant for eighty years. *Id.* at 598. Applying the plain language of the Marketable Title Act, the trial court held: "Since [the Fowlers'] chain of record title exceeds 40 years prior to 1996, they are entitled to hold this property free and clear of any claim by the [Doans]." *Id.* at 598. This Court affirmed. *Id.* at 603.

The facts in the instant case are nearly identical to those in *Fowler*. In two deeds recorded in 1905, the Haak Lumber Company granted a sixty-six foot wide railroad corridor passing through Section 31 of Ellis Township, Cheboygan County to the Jackson, Lansing & Saginaw Railroad Company. In 1916, the Jackson, Lansing & Saginaw Railroad Company conveyed the corridor to the Michigan Central Railroad Company. This deed was recorded. It is undisputed that from 1916 until plaintiffs purchased the corridor in 1996, there was no other conveyance of the railway corridor, nor did the Michigan Central Railroad Company provide record notice of its interest in the property. The corridor was abandoned, and the tracks removed in the 1930's.

Defendants' chain of title also originates with the Haak Lumber Company. In 1914, the Haak Lumber Company conveyed to the Haakwood Company a parcel that included the corridor ("the west half of the northwest ¼ of Section 31), subject to "a deed for a public highway and Railroad Right of Way." From 1939 to the present, there were numerous conveyances, all of which included the railroad property as part of the fee simple estate, subject to "easements and restrictions of record." There have been no easements or restrictions of record since 1916.

Defendants have an unbroken chain of title going back to 1939 with no record notice of any claim to the disputed strip after 1916 when the original railroad deeds were recorded. "MCL 565.101 provides that, subject to certain exceptions regarding prior claims of interest . . . any person who has an unbroken chain of title for over forty years has marketable record title in that interest." *Fowler, supra* at 599. Moreover, § 3 of the Marketable Title Act explicitly provides:

Marketable title shall be held by a person and shall be taken by his or her successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depend in whole or in part upon any act, transaction, event, or omission that occurred prior to the . . . 40-year period for other interests and all interests, claims, and charges are hereby declared to be null and void and of no effects at law or equity. [MCL 565.103.]

The only exceptions that might apply in this case are if plaintiffs' predecessor had been in "hostile possession" (i.e., actually using the right of way) or if the interest had been preserved in accordance with MCL 565.103, which further provides:

However, an interest, claim, or charge may be preserved and kept effective by filing for record within 3 years after the effective date of the amendatory act that added section 1a or during the . . . 40 year period for other interests, a notice in writing, verified by oath, setting forth the nature of the claim.

Neither exception applies because the railroad has been abandoned and unused for almost seventy years, and the railroad companies failed to record notice of their claim as required by MCL 565.103.

As noted in *Fowler, supra* at 602, this Court interprets the Marketable Title Act in accordance with the legislative purpose of "simplifying and facilitating land title transactions by allowing persons dealing with the record title owner, . . . to rely on the record title covering a period of not more than . . . 40 years." MCL 565.106. We therefore affirm the trial court's decision quieting defendants' title.

Plaintiffs' second issue on appeal is whether quieting title in favor of defendants and thereby land locking a segment of the railroad grade between defendants' property and the Sturgeon River is inequitable and against public policy. We decline to address this issue because it was not raised in the pleadings or argued before the lower court. *Higgins Lake Prop Owners v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

Because we affirm the trial court's decision quieting title in favor of defendants, defendants' issues on cross-appeal are moot.

We affirm.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Jane E. Markey